

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

JASON KRUMBACK, Plaintiff, vs. KELLIE WASKO, Secretary of South Dakota DOC, in her individual capacity; AMBER PIRAGGLIA, Director of South Dakota DOC, in her individual capacity; ADDYSON AGUIRRE, Attorney for the South Dakota DOC, in her individual capacity; TERESA BITTINGER, Warden, South Dakota State Penitentiary and Jameson Annex, in her individual capacity; OFFICER BIGGINS, supervising mail room officer at South Dakota State Penitentiary and Jameson Annex, in his individual capacity; OFFICER STORVICK, supervising mail room officer at South Dakota State Penitentiary and Jameson Annex, in his individual capacity; and RYAN VANDERAA, Unit Manager, Jameson Annex 'B Unit', in his individual capacity, Defendants.	4:24-CV-04136-KES ORDER GRANTING PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL
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Plaintiff, Jason Krumback, an inmate at the South Dakota State Penitentiary, filed a pro se civil rights lawsuit under 42 U.S.C. § 1983. Docket 1. Krumback moves for leave to proceed in forma pauperis. Docket 4. Krumback has advised the court that he requested that the prison staff copy

the complaint but did not request that it be mailed to the court for filing.

Docket 3. Because the complaint was inadvertently filed prematurely, Krumback requests that the complaint be sent back to him and that he be permitted to refile the complaint at a later date. *Id.*

Federal Rule of Civil Procedure 41(a)(1)(A)(i) provides that a plaintiff “may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” The court has not screened Krumback’s complaint under 28 U.S.C. § 1915A, and none of the defendants have been served. The court construes Krumback’s letter informing the court that the complaint was filed prematurely as a notice of voluntary dismissal under Rule 41(a)(1). Thus,

IT IS ORDERED:

1. That Krumback’s complaint, Docket 1, is dismissed without prejudice in accordance with Rule 41(a)(1). This dismissal is **not** on one of the grounds set forth in 28 U.S.C. § 1915(g) and does not constitute a “strike” under the Prison Litigation Reform Act.
2. That the Clerk of Court will send to Krumback a copy of the complaint, Docket 1, along with this order, but if Krumback elects to “refile” the complaint, he must file a new action and cannot file any further complaints in this case.
3. That Krumback’s motion for leave to proceed in forma pauperis,

Docket 4, is denied as moot.

Dated August 12, 2024.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER

UNITED STATES DISTRICT JUDGE